IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.11 OF 2007
IN
SECOND APPEAL NO.869 OF 2005

Mr.Srikrishana D. Malbari. ..Petitioners.
and ors.
Vs.

Sou. Laxmi D. Devulkar and ors. ..Respondents.

Mr.A.P.Rege for the Petitioner.
Mr.P.Chavan for the Respondents.

CORAM : A.S. OKA, J.
DATE : SEPTEMBER 12, 2007.

P.C.

1. Heard learned counsel appearing for the Review Petitioners. The Review Petitioners are the Legal heirs of the appellant. The main submission made by the learned counsel for the petitioners is that the decision of the Apex Court in the case of **Immani Apparao Vs. Gollapali Ramalingamurthi (A.I.R. 1962 S.C. Page-370)** has been misread by the Appellate Court. He submitted that even assuming that the transfer made by the appellant in the second appeal was fraudulent with a view to defeat the attachment of the suit property, the transferee should not be allowed to take the benefit of the fraudulent transfer. He invited my attention to the relevant paragraphs of the said decision of the Apex Court and in particular the Paragraphs 13 and 14 thereof. Secondly he submitted that the transferee has

not entered the witness box to prove that the consideration was paid under sale deed dated 7th June, 1985 and therefore, an adverse inference will have to be drawn. So far as the possession is concerned, he submitted that there is no specific denial in the written statement of the contesting defendants to the relevant averments made in the plaint.

2. I have considered the submissions. The Appellate Court has relied upon the categorical admission of the appellant that the only object of transferring the suit property was to save the suit property from attachment. The relief of declaration and injunction under the Specific Relief Act,1963 is always a discretionary relief and therefore, on equitable considerations, the Appellate Court declined to grant discretionary relief of declaration considering the categorical admission of the Appellant. Perusal of the Paragraphs 14 and 15 of the decision of the Apex Court shows that the Apex Court was dealing with the factual aspects of the case before it. Therefore, there is no merit in the first submission.

3 In so far as second submission is concerned, after execution of the sale deed transferee executed a registered lease deed which was preceded by an agreement of lease. The relief of declaration has been denied to

the appellant on equitable grounds. When appellant himself admitted the execution of the sale deed which refers to the valuable consideration, adverse inference cannot be drawn on the ground that the transferee has not entered the witness box.

4. So far as third submission is concerned, even assuming that there is no specific denial in the written statement of the contesting defendants, it is not axiomatic that the court should act upon an implied admission in every case. It is the discretion of the court to rely upon an admission and in a given case the court can always call upon the plaintiff to prove a particular fact. In my view, there is no error apparent on the face of the record. There is no case made out for review. Hence, Review Petition is rejected.

(A.S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.12 OF 2007
IN
SECOND APPEAL NO.899 OF 2006

Mr.Srikrishana D. Malbari. ..Petitioners.
and ors.
Vs.

Mr.Sangram S.Sawant and ors. ..Respondents.

Mr.A.P.Rege for the Petitioners.
Mr.P.Chavan for the Respondents.

CORAM : A.S. OKLA, J.
DATE : SEPTEMBER 12, 2007.

P.C.

1. For the reasons set out in Review Petition No.11 of 2007, this petition is dismissed.

(A.S. OKA, J.)